

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: NATIONAL PRESCRIPTION</b>	)	<b>CASE NO. 1:17-MD-2804</b>
<b>OPIATE LITIGATION</b>	)	
	)	<b>SPECIAL MASTER COHEN</b>
<b>THIS DOCUMENT RELATES TO:</b>	)	
<b>“All Cases”</b>	)	
	)	<b>DISCOVERY RULING NO. 14, PART 26</b>
	)	<b>REGARDING WALGREENS’</b>
	)	<b>PRIVILEGE CLAIMS</b>

**AGENDA ITEM 308**

During Track Three discovery, defendant Walgreens produced certain documents with redactions based on attorney-client privilege. Plaintiffs took issue with a number of those redactions, and the parties engaged in a productive meet-and-confer process that narrowed the number of disputed documents. Plaintiffs requested *in camera* review of nine of the remaining disputed documents. Walgreens agreed to downgrade three of these documents to “Not Privileged” and submitted the remaining disputed documents to the Special Master for *in camera* review. Both parties submitted a chart summarizing their arguments regarding each contested document. The parties each also submitted a letter brief detailing their arguments. Having considered these submissions carefully, the Special Master now rules on the challenged documents.

## I. Legal Standards.

The special master has applied the legal standards and authorities set out in **all** prior “Discovery Rulings No. 14, Part x,” and incorporates them by reference.<sup>1</sup> *See, e.g., Zigler v. Allstate Ins. Co.*, 2007 WL 1087607 at \*1 (N.D. Ohio Apr. 9, 2007) (a “communication is not privileged simply because it is made by or to a person who happens to be an attorney. To be privileged, the communication must have the *primary* purpose of soliciting legal, rather than business, advice.”) (internal quotation marks and citations omitted, emphasis in original); *see also Fed. Trade Comm’n v. Abbvie, Inc.*, 2015 WL 8623076 at \*9 (E.D. Pa. Dec. 14, 2015) (“attorney-client privilege does not apply . . . if the client seeks regulatory advice for a business purpose”). Also, when asserting attorney-client privilege, “[t]he burden of establishing the existence of the privilege rests with the person asserting it.” *United States v. Dakota*, 197 F.3d 821 at 825 (6<sup>th</sup> Cir. 2000). *See also* docket no. 3584 at 1 (“The burden is on the proponent to prove that the documents are privileged; and to be privileged, the communication must have the primary purpose of soliciting or receiving legal, as opposed to business, advice. That line is sometimes very difficult to draw when . . . [a company] operates in a heavily regulated business and regulatory compliance advice from in-house counsel is therefore part of [the company’s] day-to-day business operations.”). “Claims of attorney-client privilege are ‘narrowly construed because [the privilege] reduces the amount of information discoverable during the course of a lawsuit.’” *In re Columbia/HCA*, 293 F.3d 289 at 294 (quoting *United States v. Collins*, 128 F.3d 313, 320 (6<sup>th</sup> Cir. 1997)).<sup>2</sup>

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<sup>1</sup> *See, e.g.*, docket nos. 1321, 1353, 1359, 1380, 1387, 1395, 1498, 1593, 1610, and 1666.

<sup>2</sup> Beyond these generally applicable rules regarding privilege, the Court has also instructed the parties that “Defendants shall not interpose attorney-client privilege as a reason for not producing discovery of all the details of their [suspicious order monitoring systems].” Docket no. 1147 at 1.

**II. Rulings.**

WAGMDL00674321		Redactions sustained.
WAGMDL01173777		Redactions sustained.
WAGMDL00674283		Redactions sustained.
WAGMDL00750667		Redactions sustained.
WAGMDL00750529		Redactions sustained.
WAGMDL01180723		Overruled.
WAGMDL01174179		Privilege claim withdrawn.
WAGMDL01173439		Privilege claim withdrawn.
WAGMDL01173510		Privilege claim withdrawn.

**III. Objections.**

Any party choosing to object to any aspect of this Ruling must do so on or before April 20, 2021.

**RESPECTFULLY SUBMITTED,**

/s/ David R. Cohen  
**David R. Cohen**  
**Special Master**

**Dated: April 13, 2021**